

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

EXPLANATION OF DRAFT AMENDMENTS

Chesapeake Bay Preservation Area Designation and Management Regulations

GENERAL NOTE: The reader will note that, besides specific amendment language proposed in numerous sections of the regulations, the regulations are proposed to be reorganized to increase clarity and improve one's ability to understand them. The reorganization is focused on (1) locating language pertaining to the same general issues in the same part of the regulations, and (2) more clearly describing the processes involved in local adoption of Bay Act program elements, review of those elements and their implementation for consistency with the provisions of the Act and regulations, and the provision of guidance and assistance by the Board and Department.

§ 9VAC10-20-30. (*Originally § 1.3, will continue to be § 9VAC10-20-30*) (Pages 1-2)

The language of this section previously focused on local governments incorporating the criteria in these regulations into their comprehensive plans, zoning ordinances and subdivision ordinances, as directed in the Act. However, the Act also directs local governments to "employ" those measures to ensure water quality is protected from the impacts of various uses and development. While this additional requirement is implied in the regulations, various commenters have recommended that it be more clearly stated.

§ 9VAC10-20-40. (*Originally § 1.4, will continue to be § 9VAC10-20-40*) (Pages 2-5)

- ! Highly erodible soils (Page 3)** — This is a technical amendment to reflect the name change of the U. S. Department of Agriculture agency responsible for the referenced material. Formerly this agency was named the Soil Conservation Service. Now it is named the Natural Resource Conservation Service.
- ! Highly permeable soils (Page 3)** — This is a technical amendment to reflect the name change of the U. S. Department of Agriculture agency responsible for the referenced material. Formerly this agency was named the Soil Conservation Service. Now it is named the Natural Resource Conservation Service.
- ! Intensely Developed Areas (Page 3)** — This is a technical amendment to change the reference from the old regulation numbering system to the new numbering system used in the Virginia Administrative Code (VAC). Also, the VAC refers to these regulations categorically as "this chapter" (of the VAC).

- ! **Local program adoption date (Page 3)** — This is a technical amendment to change the reference from the old regulation numbering system to the new numbering system used in the Virginia Administrative Code (VAC). Also, the VAC refers to these regulations categorically as “this chapter” (of the VAC).
- ! **Plan of development (Page 4)** — This is a technical amendment to change the reference to “these regulations” to, instead, reference “this chapter,” the terminology used consistently in the VAC to refer to these regulations.
- ! **Redevelopment (Page 4)** — This language is added to clarify the meaning of the term, consistent with guidance and interpretations issued by the Board and Department since the original regulations were adopted.
- ! **Shoreline (Page 4)** — The definition for this term is added as recommended by commenters in several reviews and evaluations of the regulations. The term applies to determining the seaward boundary of the Resource Protection Area (RPA), but could be interpreted in various ways. Therefore, it is important for the regulations to indicate the intended meaning.
- ! **Tributary stream (Page 5)** — This amendment is intended to provide local governments and applicants for permits to use or develop land with additional options for identifying tributary streams, around which Chesapeake Bay Preservation Areas must be designated. Since the language is optional, local governments will have to redesignate their Chesapeake Bay Preservation Areas. However, most local governments use the plan of development review process as an opportunity to refine the boundaries of the RPA, in particular, using more complete and site-specific information than may have been used in the original, more general designation process. This amendment provides an option to use a specified drainage area as a threshold for determining which streams are to be considered “tributary streams,” and thus must have CBPAs designated around them. While the number selected is somewhat arbitrary, the regulation advisory committee agreed that a drainage area of this size is probably conservative. That is, it is small enough that it is not likely to eliminate many streams that are truly perennial. The building industry representatives on the committee agreed that their industry would be willing to accept this number and the risk that some intermittent streams might be included, because they are satisfied that this option for designating tributary (perennial) streams should speed the permitting process and, thus, save them time and money.

! **§ 9VAC10-20-50. (Originally § 2.1, will continue to be § 9VAC10-20-50) (Page 5)**

This change incorporates into the goals of local programs the Chesapeake Bay Program’s riparian forest buffer initiative to which the Governor of Virginia, as a member of the Chesapeake Bay Executive Council, committed the Commonwealth in October 1996. Vegetated buffer areas have been an integral part of Chesapeake Bay Preservation Areas since the

program's inception. This change merely links the existing buffer requirement to the Commonwealth's commitment to promote forest buffers.

! § 9VAC10-20-60. (*Originally § 2.2, will continue to be § 9VAC10-20-60*) (Page 5)

This change eliminates the original local program adoption deadlines, which are no longer applicable since all Tidewater local governments have adopted programs.

! § 9VAC10-20-60.B (*Originally § 2.2.B, will continue to be § 9VAC10-20-60.B*) (Page 6)

This is a technical amendment to change the reference to "these regulations" to, instead, reference "this chapter," the terminology used consistently in the VAC to refer to these regulations.

! § 9VAC10-20-60.C (*Originally § 2.2.C, will continue to be § 9VAC10-20-60.C*) (Page 6)

This is a clarification amendment, simply referring the reader to the part of the regulations that include criteria pertaining to changes in local comprehensive plans that address water quality protection.

! § 9VAC10-20-60.D (*Originally § 2.2.D, will continue to be § 9VAC10-20-60.D*) (Page 6)

This is a clarification amendment, simply referring the reader to the parts of the regulations that include criteria pertaining to changes in local zoning ordinances and the performance criteria that provide for water quality protection.

! § 9VAC10-20-60.E (*Originally § 2.2.E, will continue to be § 9VAC10-20-60.E*) (Page 6)

This is a clarification amendment, simply referring the reader to the parts of the regulations that include criteria pertaining to changes in local subdivision ordinances and the performance criteria that provide for water quality protection.

! § 9VAC10-20-60.F (*Originally § 2.2.F, will continue to be § 9VAC10-20-60.F*) (Page 6)

This is a technical amendment to add the words "of this chapter," the terminology used consistently in the VAC to refer to these regulations.

! § 9VAC10-20-70 (*Originally § 3.1, will continue to be § 9VAC10-20-70*) (Page 6)

This is a technical amendment to add the words "of this chapter," the terminology used consistently in the VAC to refer to these regulations.

**! § 9VAC10-20-80.B.4 (*Originally § 3.2.B.4, will continue to be § 9VAC10-20-80.B.4*)
(Page 7)**

This language is changed as a clarification, consistent with the Board's Guidance Policy Paper entitled "Board Determination of Consistency Regarding Local Designation of Resource Protection Areas," dated February 1992.

**! § 9VAC10-20-80.B.5 (*Originally § 3.2.B.5, will continue to be § 9VAC10-20-80.B.5*)
(Page 7)**

This language is changed to clarify the status of the vegetated buffer as part of a locally designated Resource Protection Area, reflecting guidance provided in several Department Information Bulletins regarding modifications of buffer areas.

! § 9VAC10-20-80.B.6 (*New subdivision*) (Page 7)

This language is intended to clarify conditions for adjusting the size of a locally designated Resource Protection Area.

! § 9VAC10-20-90.B (*Originally § 3.3.B, will continue to be § 9VAC10-20-90.B*) (Page 7)

This language is intended to provide clarification of requirements for designating Resource Management Areas (RMAs), consistent with the Board's Guidance Policy Paper entitled "Board Determination of Consistency Regarding Local Designation of RMA," dated July 24, 1991.

**! § 9VAC10-20-90.B.5 (*Originally § 3.3.B.5, will continue to be § 9VAC10-20-90.B.5*)
(Page 8)**

This language is intended to provide clarification of requirements for designating Resource Management Areas (RMAs), consistent with the Board's Guidance Policy Paper entitled "Board Determination of Consistency Regarding Local Designation of RMA," dated July 24, 1991.

! § 9VAC10-20-90.C (*Originally § 3.3.C, will continue to be § 9VAC10-20-90.C*) (Page 8)

This is a technical amendment to add the words "of this chapter," the terminology used consistently in the VAC to refer to these regulations.

! §§ 9VAC10-20-90.C.1 through 9VAC10-20-80.C.5 (*New subdivisions*) (Pages 8-9)

This language is intended to provide clarification of requirements for designating Resource Management Areas (RMAs), consistent with the Board's Guidance Policy Paper entitled "Board Determination of Consistency Regarding Local Designation of RMA," dated July 24, 1991.

! § 9VAC10-20-100. (Originally § 3.4, will continue to be § 9VAC10-20-100) (Page 9)

The first change in this section is a technical amendment to add the words “of this chapter,” the terminology used consistently in the VAC to refer to these regulations. The second change, in the last sentence, is intended to clarify that the conditions for designating local Intensely Developed Areas must have existed at the time of the local program’s adoption.

! § 9VAC10-20-100.A (Originally § 3.4.A, will be § 9VAC10-20-100.1) (Page 9)

The numbering is changed here to be consistent with the new numbering style of the VAC.

! § 9VAC10-20-100.B (Originally § 3.4.B, will be § 9VAC10-20-100.2) (Page 9)

The numbering is changed here to be consistent with the new numbering style of the VAC. Also, an additional condition is added here upon the recommendation of various commenters during earlier reviews of the regulations.

! § 9VAC10-20-100.C (Originally § 3.4.C, will be § 9VAC10-20-100.3) (Page 10)

This is a technical amendment to change the numbering of this subsection to be consistent with the new numbering style of the VAC.

! § 9VAC10-20-105 (New subdivision, originally at § 4.1.B, then § 9VAC10-20-110.B) (Page 10)

This language was moved to this location from its former location at § 9VAC10-20-110.B. The cross-reference has been changed to reference the amended location of the referenced language.

! § 9VAC10-20-110.A (Originally § 4.1.A, will be § 9VAC10-20-110.1) (Page 10)

This is a technical amendment to change the numbering of this subsection to be consistent with the new numbering style of the VAC.

! § 9VAC10-20-110.B (Originally §§ 4.1.B and new language was 4.4, then new language was § 9VAC10-20-140; will be § 9VAC10-20-110.2) (Page 10)

The numbering is changed here to be consistent with the new numbering style of the VAC. Also, the language formerly at this subsection was moved to the new § 9VAC10-20-105. The new language was moved here from its former location at § 9VAC10-20-140.

! § 9VAC10-20-120.1 (*Originally § 4.2.1, will continue to be § 9VAC10-20-120.1*) (Page 11)

This is the first (minimize land disturbance) of what are commonly referred to in this program as “the three general criteria,” which have been the source of considerable confusion because of the way the criteria have been worded. This change is consistent with commenters recommendations to clarify the meaning of these three criteria, which use ambiguous terms such as “allowable”, “desired”, and “possible.” The regulation advisory committee discussed these issues at length, agreeing that (1) a certain amount of local discretionary review is appropriate for this program, and (2) the regulation amendments should not disrupt the opportunity for such discretionary review. However, the committee also agreed that the ambiguity of meaning of these terms leads to varying interpretations, and that amendments should clarify the Board’s intent and, to the degree possible, stabilize their meaning. The committee agreed that wherever the words “allowable” or “desired” appeared, they should be replaced with the term “proposed”, which has a clearer and more consistent meaning. The committee also agreed that the terms “where possible” and “maximum extent possible” should be replaced with “where practicable” and “maximum extent practicable.”

! § 9VAC10-20-120.2 (*Originally § 4.2.2, will continue to be § 9VAC10-20-120.2*) (Page 11)

This is the second (preserve existing vegetation) of “the three general criteria,” which have been the source of considerable confusion because of the way the criteria have been worded. This change is also consistent with commenters recommendations to clarify the meaning of these three criteria, which use ambiguous terms such as “allowable”, “desired”, and “possible.” The regulation advisory committee discussed these issues at length, agreeing that (1) a certain amount of local discretionary review is appropriate for this program, and (2) the regulation amendments should not disrupt the opportunity for such discretionary review. However, the committee also agreed that the ambiguity of meaning of these terms leads to varying interpretations, and that amendments should clarify the Board’s intent and, to the degree possible, stabilize their meaning. The committee agreed that wherever the words “allowable” or “desired” appeared, they should be replaced with the term “proposed”, which has a clearer and more consistent meaning. The committee also agreed that the terms “where possible” and “maximum extent possible” should be replaced with “where practicable” and “maximum extent practicable.”

! § 9VAC10-20-120.5 (*Originally § 4.2.5, will continue to be § 9VAC10-20-120.5*) (Page 11)

This is the third (minimize impervious cover) of “the three general criteria,” which have been the source of considerable confusion because of the way the criteria have been worded. This change is also consistent with commenters recommendations to clarify the meaning of these three criteria, which use ambiguous terms such as “allowable”, “desired”, and “possible.” The regulation advisory committee discussed these issues at length, agreeing that (1) a certain amount of local discretionary review is appropriate for this program, and (2) the regulation amendments should not disrupt the opportunity for such discretionary review. However, the committee also agreed that the ambiguity of meaning of these terms leads to varying interpretations, and that amendments should clarify the Board’s intent and, to the degree possible, stabilize their meaning.

The committee agreed that wherever the words “allowable” or “desired” appeared, they should be replaced with the term “proposed”, which has a clearer and more consistent meaning. The committee also agreed that the terms “where possible” and “maximum extent possible” should be replaced with “where practicable” and “maximum extent practicable.”

! § 9VAC10-20-120.6 (*Originally § 4.2.6, will continue to be § 9VAC10-20-120.6*) (Page 11)

When the regulations were first adopted, the Virginia Erosion and Sediment Control Law and Regulations exempted single-family homes separately built from subdivisions from having to comply with that law. However, the Board recognized that construction of a home without proper erosion control adjacent to a stream, river, or bay could — and often did — result in sediment pollution. Therefore, they included such single-family home construction under the erosion and sediment control criteria of this program. However, the Erosion and Sediment Control Law and Regulations have since been amended to no longer exempt single-family homes. Since this subsection ties erosion control compliance to that state law (except for the few things that were exempted), single-family homes no longer need to be included here and are, thus, deleted.

! § 9VAC10-20-120.7.a (*Originally § 4.2.7.a, will continue to be § 9VAC10-20-120.7.a*) (Page 11)

The requirement to have septic systems pumped out at least once every five years has been controversial throughout the program’s history. Various commenters have recommended that the septic system requirements should be repealed from these regulations and deferred to the Virginia Health Department’s septic system regulations, since the VDH is the natural authority for such issues. However, the VDH is currently amending its septic system regulations and has elected not to include any requirements for mandatory inspections or pump-out. Therefore, the regulation advisory committee was reluctant to repeal the pump-out requirement altogether, because there is significant evidence that failing septic systems can be a source of water pollution, especially in coastal areas, and that routine maintenance, including pump-out, is one of the most effective ways to prevent system failures.

The committee agreed that the pump-out requirement could be made more flexible by providing local governments the option of allowing septic system owners to install a filtering device in the outflow pipe from the septic tank, as suggested by the VDH and proposed in this subdivision. The VDH did not include this filter option in its own regulations because there is currently no national standard for such devices. However, a standard is being developed and may very well be completed by the time the Bay Regulations become effective. Therefore, the proposed language refers to the national standard setting organization but includes a default standard, based on VDH advice, until that national standard becomes available.

! § 9VAC10-20-120.7.b (*Originally § 4.2.7.b, will continue to be § 9VAC10-20-120.7.b*) (Page 12)

The requirement to have a 100 percent reserve area of land for a septic system drainfield has also been controversial throughout the program's history. Various commenters have recommended that the septic system requirements should be repealed from these regulations and deferred to the Virginia Health Department's septic system regulations, since the VDH is the natural authority for such issues. However, the VDH is currently amending its septic system regulations and has elected not to make any changes in its limited reserve drainfield requirements. Therefore, the regulation advisory committee was reluctant to repeal the reserved drainfield requirement altogether, because there is significant evidence that failing septic systems can be a source of water pollution, especially in coastal areas, and that a sufficient area of land that percolates adequately needs to be available in case a drainfield must be replaced.

The committee agreed that the reserve drainfield requirement could be made more flexible by providing local governments the option of allowing septic system owners to install two somewhat smaller than normal drainfields with a diversion valve, as has been practiced for many years in Fairfax County, Virginia. The diversion valve alternative proposed in this subdivision is based on the requirements of the Fairfax County Health Department for such systems.

! §§ 9VAC10-20-120.7.b(1) through 9VAC10-20-120.7(9) (*New subdivisions*) (Pages 12-13)

These are the new conditions that must be met if local governments allow homeowners to use the option of alternating drainfields, based on the Fairfax County Health Department's regulations.

! § 9VAC10-20-120.8 (*Originally § 4.2.8, will continue to be § 9VAC10-20-120.8*) (Page 13)

The several agencies of the Natural Resources Secretariat have been working for several years to develop a set of stormwater management standards that all of the agencies could agree to use in their separate programs. This process has involved oversight from the General Assembly and several advisory committees composed of representatives of all affected interest groups. The goal has been to eliminate any conflicts and confusion generated by having different standards and criteria in each agency. The reconciled water quality standard being proposed by DCR is the result of a consensus reached by all interested parties and agencies after considerable public comment. All of the agencies have agreed that the Virginia Stormwater Management Regulations, under the authority of the Department of Conservation and Recreation, should be the location of these new standards and that the other agencies will stipulate their stormwater management requirements by reference to the DCR regulations.

DCR is in the process of amending its regulations at this time and is slightly ahead of the CBLAB amendment process. However, DCR is not through their public comment process yet, so their proposed amendments are still potentially subject to change. These regulations reference only the water quality protection provisions of the DCR Regulations. The following is the pertinent proposed DCR language, including additional definitions needed to understand the reconciled (DCR) stormwater quality standard:

Percent impervious means the impervious area within the site divided by the area of the site multiplied by 100.

Site means the boundaries of the parcel or the planning area in which the project is located.

Planning Area means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

Compliance with the water quality criteria may be achieved by employing the performance-based criteria or the technology-based criteria to either the site or a planning area.

A. Performance-based Criteria — For land development, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP(s) shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level, based upon the following four applicable land development situations for which performance criteria apply:

1. Situation 1: This consists of land development where the existing impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total impervious cover which is less than the average land cover condition.

Requirement — No reduction in the post-development pollutant discharge is required.

2. Situation 2: This consists of land development where the existing impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total impervious cover which is greater than the average land cover condition.

Requirement — The pollutant discharge after development shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3: This consists of land development where the existing impervious cover is greater than the average land cover condition.

Requirement — The pollutant discharge after development must not exceed either (1) the pollutant discharge based on the existing conditions less ten (10) percent; or (2) the pollutant discharge based on the average land cover condition, whichever is greatest.

4. Situation 4: This consists of land development where the existing impervious cover is served by an existing stormwater management BMP(s) that addresses water quality.

Requirement — The pollutant discharge after development shall not exceed the existing pollutant discharge based on the existing impervious cover while served by the existing water quality BMP. The existing water quality BMP must be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

B. Technology-based Criteria — For land development, the post developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP(s) as required by the post-developed condition impervious cover as specified in Table 1. The selected BMP(s) shall be located, designed, and maintained to perform at the target removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 which meet the required target pollutant removal efficiency will be available from the Virginia Department of Conservation and Recreation.

Table 1

<u>Water Quality BMP*</u>	<u>Target Pollutant Removal Efficiency</u>	<u>Percent Impervious</u>
<u>Vegetated filter strip</u> <u>Grassed swale</u>	<u>10%</u> <u>15%</u>	<u>16-21%</u>
<u>Constructed wetlands</u> <u>Extended detention (2x WQ Vol)</u> <u>Retention basin I (3 x WQ Vol)</u>	<u>30%</u> <u>35%</u> <u>40%</u>	<u>22-37%</u>
<u>Bioretention basin</u> <u>Bioretention filter</u> <u>Extended detention-enhanced</u> <u>Retention basin II (4 x WQ Vol)</u> <u>Infiltration (1 x WQ Vol)</u>	<u>50%</u> <u>50%</u> <u>50%</u> <u>50%</u> <u>50%</u>	<u>38-66%</u>
<u>Sand Filter</u> <u>Infiltration (2 x WQ Vol)</u> <u>Retention basin III (4 x WQ Vol)</u> <u>w/ aquatic bench)</u>	<u>65%</u> <u>65%</u> <u>65%</u>	<u>67-100%</u>

* Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local government or the Department.

It is important to note that this new, reconciled stormwater standard continues to use the no-net increase (for new development) and 10 percent decrease (for redevelopment-type projects) performance standards used in the Bay Act regulations. The reconciled standard is also based on the “average land cover condition”, used in the Bay Act regulations, with the same default condition (16 percent impervious). Furthermore, local governments will continue to have the option to calculate more accurate average imperviousness for their communities or watersheds,

based on existing conditions. One improvement in the reconciled standard is that developers may use the technology approach, selecting BMPs from the table, which will be a quicker and simpler process for many projects. It is important to note that interested parties must follow the DCR public comment process and provide comments through that process on the stormwater regulations in order to maintain these provisions in the stormwater management regulations. The CBLAB desires to reference the DCR regulations, however they end up, rather than repeating the standards or establishing conflicting standards.

! § 9VAC10-20-120.8.a (*Originally § 4.2.8.a, will be deleted*) (Page 13)

This subdivision is deleted due to the reorganization of this subsection as a result of the reference to the DCR stormwater management water quality requirements.

! § 9VAC10-20-120.8.a(1) [*Originally § 4.2.8.a(1), will be deleted*] (Page 13)

This subdivision is deleted due to the reorganization of this subsection as a result of the reference to the DCR stormwater management water quality requirements. The option of incorporating BMPs as one way to satisfy the DCR regulations is included in those regulations.

! § 9VAC10-20-120.8.a(2) [*Originally § 4.2.8.a(2), will be deleted*] (Page 13)

This subdivision is deleted due to the reorganization of this subsection as a result of the reference to the DCR stormwater management water quality requirements. This provision originally recognized what was, at the time, the only legislatively authorized form of regional stormwater management as an acceptable method of compliance with the Bay Act stormwater management criteria. However, since then, other more effective processes for accomplishing regional stormwater management have been authorized. The DCR stormwater management regulations allow and encourage the use of regional stormwater management planning and facilities as acceptable means to comply with their requirements. Therefore, this provision is no longer needed in the Bay Act regulations.

! § 9VAC10-20-120.8.a(3) [*Originally § 4.2.8.a(3), will be § 9VAC10-20-120.8.a*] (Page 14)

This is a technical amendment to renumber this subdivision as a result of the reorganization of this subsection.

! § 9VAC10-20-120.9 (Originally § 4.2.9, will be § 9VAC10-20-120.9) (Page 14)

The agricultural criteria in the regulations have been much criticized, and many recommendations of changes have been made over the years. Perhaps the most notable problem with the agricultural requirements is that the Board, based on the best advice of the various agricultural conservation agencies, set a deadline of January 1, 1995 for the completion of all the agricultural soil and water quality conservation plans required to be developed by these regulations. In setting that deadline, the Board did not anticipate that so many Tidewater localities would include their entire jurisdictions in the designations of their Chesapeake Bay Preservation Areas. As a result of such broad designations, especially in key agricultural counties, much more agricultural land was made subject to the conservation plan requirement.

The Board provides funding assistance to local Soil and Water Conservation Districts to provide assistance to farmers in developing these plans. However, in many cases the farmers are not required to implement the plans once they are developed and approved. When the regulations were originally being debated, the cooperating agricultural conservation agencies convinced the Board that they would be able to exert persuasive influence to convince farmers to implement the plans without the need to require implementation in the regulations. There is anecdotal evidence that this has, indeed, happened in many cases.

It is clear that agriculture is responsible for a large volume of the pollution that gets into state waters from nonpoint source runoff. However, it has become evident that (1) the Board has insufficient technical assistance resources to provide assistance to all the farmers who are required to comply; and (2) requiring plans that may not be implemented is an inefficient use of available resources. For several years, Department staff has been working with local districts, the staffs of the cooperating agricultural agencies, and farmer representatives to develop a more efficient and effective way to accomplish agricultural conservation through these regulations. There is a consensus among those groups that the proposed amendments herein should accomplish that.

The main changes in the agricultural criteria are as follows:

1. Conservation plans will no longer be required for their own sake. Instead, assessments will be conducted of all farm fields within CBPAs to determine what conservation practices are currently being used and what others may be needed. Plans will only be developed for those practices that are needed, which will save considerable time.
2. This subsection clearly states that the assessments will address soil erosion, nutrient management, and the management of pesticides, three plan components that districts have been addressing throughout the program's history.
3. The deadline for completion of this process is proposed to be deleted as impractical and meaningless, given the level of resources available for technical assistance. To date, the existing resources have only been sufficient to reach about 15 percent of the fields and

tracts that must comply. Based on currently available resources, the Department estimates that all farmland required to have plans developed would not be reached and in compliance before the year 2015 or later. Instead, the amendments include a provision (subdivision 9VAC10-20-120.9.b below) for targeting fields and tracts nearest the water first and, secondarily, larger fields and tracts before smaller ones. The goal is to provide water quality protection to the lands nearest the water and on larger acreages first.

4. An original requirement for the Department of Conservation and Recreation (DCR) to report on the effectiveness of existing state and federal agricultural conservation programs is proposed to be deleted. Cooperating agricultural conservation agencies assured the Board, through testimony and public comments, that the agricultural provisions in the Bay Act regulations would be sufficient in conjunction with all other existing agricultural programs. This requirement was included to provide reassurance to the Board that claims being made by these agencies were true. The required report by DCR was intended to be a one-time event, and the report confirmed the earlier claims. Therefore, this provision is no longer needed.

! § 9VAC10-20-120.9.a (*New subdivision*) (Page 14)

This subdivision provides greater flexibility regarding the standards used for various agricultural BMPs, where cost-sharing with government agencies is not involved.

! § 9VAC10-20-120.9.a(1) (*New subdivision*) (Page 15)

This subdivision provides specific standards for the erosion control component of the required conservation assessments and any plans that are developed as a result of the assessments. This provision will provide more flexibility than before, while still assuring water quality protection. In doing so, the provision assures consistency with the erosion control standards of the USDA-NRCS, which is the lead agricultural agency for erosion control planning and protection.

! § 9VAC10-20-120.9.a(2) (*New subdivision*) (Page 15)

This subdivision requires soil test information for any full nutrient management plans. While this is a new requirement, the public comment and advisory committee processes have made a number of facts clear regarding nutrient management:

1. Nutrient pollution has been identified as the most important pollution problem impacting the Chesapeake Bay and its tributaries.
2. Agriculture is responsible for a large volume of the nutrient pollution that gets into state waters and the Bay from nonpoint source runoff and groundwater leaching.
3. Nutrient management is perhaps the most important agricultural water quality protection practice that farmers can implement.

4. It is impossible to write an effective nutrient management plan without soil test information.
5. It is impractical for a farmer to expect to effectively manage nutrients without soil test information.
6. Soil tests indicate the levels of various nutrients existing in the soil. When compared with the nutrient needs for planned crops, nutrient application rates can be determined, saving the farmer money and minimizing the risk of nutrients not being used by the plants but, instead, running off or leaching into surface waters or groundwater.
7. Farmer have complained that they cannot afford the cost of soil tests, which are no longer free. However, the overwhelming amount of testimony indicates that, in most cases, the savings derived from careful implementation of a nutrient management plan — incorporating soil test information — saves far more money than the tests cost. Furthermore, DCR is currently considering including the cost of soil tests among the practices that will be eligible for the new tax credit program recently adopted by the General Assembly.

Therefore, this proposal requires soil test information when full nutrient management plans are needed.

! § 9VAC10-20-120.9.a(3) (*New subdivision*) (Page 15)

This subdivision merely codifies the current practice regarding the provision of pest management technical assistance, which is typically provided by distribution of Virginia Cooperative Extension pest management guidance or referrals to local extension specialists.

! § 9VAC10-20-120.9.b (*New subdivision*) (Page 15)

As a substitute for the earlier conservation plan completion deadline, this subdivision requires targeting fields and tracts nearest the water first for conservation assessments and plan development and, secondarily, larger fields and tracts before smaller ones. The goal is to provide water quality protection to the lands nearest the water and on larger acreages first.

! § 9VAC10-20-120.9.c (*New subdivision*) (Page 15)

This subdivision continues to assign to local Soil and Water Conservation Districts the responsibility and of approving conservation plans developed through the assessment process. Districts have made it clear that they consider themselves the appropriate authority for this and desire to continue in this role.

! § 9VAC10-20-120.10 (*Originally § 4.2.10, will continue to be § 9VAC10-20-120.10*)
(Pages 15-16)

Changes to this subsection are primarily technical. The VAC term “this chapter” is substituted for the previous term “these regulations.” The state name is inserted before “Department of Forestry” to clarify that the state agency is being referenced. The term “instream” is grammatically corrected to “in-stream.” Finally, since the Department of Forestry and the Forestry Industry were just beginning implementation of a voluntary forestry BMP program when the Bay Act regulations were being developed, the Board included a requirement — similar to the one for DCR — that the DOF report the effectiveness of that program in 1991, after a couple of years of implementation. The DOF made the report, indicating that the majority of loggers were using BMPs and that no additional requirements needed to be applied through these regulations. Since that report was a one-time event, there is no further need for the language requiring it.

! § 9VAC10-20-130 (*Originally § 4.3, will continue to be § 9VAC10-20-130*) (Page 16)

The changes in this section title and introduction are for clarification only and change nothing substantively.

! § 9VAC10-20-130.A (*Originally § 4.3.A, will be § 9VAC10-20-130.1*) (Page 16)

The numbering is changed to be consistent with the new VAC formatting style. The catch line is changed to more accurately reflect the content of the section. The water quality impact assessment requirement is deleted here and moved to the first subdivision of this section. The remaining changes in this subsection are clarifications of intent or recognize additional permitted uses, resulting from earlier versions of the regulations or this amendment process, but not yet referenced here.

! § 9VAC10-20-130.1.a (*New subdivision*) (Page 16)

This new subdivision picks up the water quality impact assessment requirement deleted in the previous subsection.

! § 9VAC10-20-130.A.1 (*Originally § 4.3.A.1, will be § 9VAC10-20-130.1.b*) (Page 16)

This subdivision is renumbered to be consistent with the new VAC numbering style, and a phrase is added to clarify but not change the meaning.

! § 9VAC10-20-130.A.1.a [Originally § 4.3.A.1.a, will be § 9VAC10-20-130.1.b(1)] (Page 16)

This subdivision is renumbered to be consistent with the new VAC numbering style, and the language is amended to clarify but not change the meaning.

! § 9VAC10-20-130.A.1.b [Originally § 4.3.A.1.b, will be § 9VAC10-20-130.1.b(2)] (Page 16)

This subdivision is renumbered to be consistent with the new VAC numbering style, and the language is amended to provide a more specific reference to another section of the regulations, using the new numbering.

! § 9VAC10-20-130.A.1.c [Originally § 4.3.A.1.c, will be § 9VAC10-20-130.1.b(3)] (Page 16)

This subdivision is renumbered to be consistent with the new VAC numbering style.

! § 9VAC10-20-130.A.1.d [Originally § 4.3.A.1.d, will be § 9VAC10-20-130.1.b(4)] (Page 16)

This subdivision is renumbered to be consistent with the new VAC numbering style, and the language is amended to clarify but not change the meaning. Furthermore, as discussed earlier (§ 9VAC10-20-120.2, etc.), the term “wherever possible” is changed to “wherever practicable.”

..! § 9VAC10-20-130.A.2 (Originally § 4.3.A.2, will be § 9VAC10-20-130.1.c) (Pages 16-17)

This subdivision is renumbered to be consistent with the new VAC numbering style, and the language is amended to provide a more specific reference to other subsections of the regulations, using the new numbering, and to reference the similar applicable requirements of other agencies.

! § 9VAC10-20-130.A.3 (Originally § 4.3.A.3, will be § 9VAC10-20-130.1.d) (Page 17)

This subdivision is renumbered to be consistent with the new VAC numbering style, and the language is amended to clarify but not change the meaning.

! §§ 9VAC10-20-130.A.3a through 9VAC10-20-130.A.3.d [Originally §§ 4.3.A.3.a through 4.3.A.3.d, will be §§ 9VAC10-20-130.1.d(1) through 9VAC10-20-130.1.d(4)] (Page 17)

These subdivisions are renumbered to be consistent with the new VAC numbering style.

! § 9VAC10-20-130.1.e (New subdivision) (Page 17)

This language is added to address recommendations to include ponds and lakes in the definition of “water-dependent facilities.” While ponds and lakes must be located in the landscape in a position that assures a certain amount of water flow from rainfall or other sources to sustain their water storage volume, the Board and Department have consistently taken the position that they do not necessarily have to be located at the shoreline or within state waters, as is true for things

defined in these regulations as “water-dependent facilities.” However, there may indeed be times where it is acceptable or even preferable to locate a pond or lake within the boundaries of a Resource Protection Area. This language specifies the conditions under which that may be permitted.

! §§ 9VAC10-20-130.A.2 through 9VAC10-20-130.2.b (*New subdivision; originally §§ 4.5.C through 4.5.C.2, then was §§ 9VAC10-20-150.C through 9VAC10-20-150.C.2*) (Page 17)

This new subdivision is merely previous language regarding exemptions from the Resource Protection Area criteria that was reorganized to this location in the regulations from the sections specified above.

! § 9VAC10-20-130.B (*Originally § 4.3.B, will be § 9VAC10-20-130.3*) (Page 17)

The language added at the beginning of this subsection is derived from interpretations the Department has provided over time regarding buffer modifications. There has been confusion about whether encroachments that are allowed into the buffer result in an actual movement of the RPA/buffer boundary. The Department and Board have consistently held that the boundary line does not move, even though certain uses may be permitted within the buffer and, under certain conditions, encroachments are allowed. As in cases of other regulation guidance and interpretations provided by the Board and Department, many commenters and members of various evaluation and advisory committees have urged the Board to incorporate such guidance and interpretive language into the body of the regulations for the purpose of clarification.

Also in this subsection, the word “wide” is added twice to clarify that the 100-foot dimension applies to buffer width, and the term “run-off” is corrected grammatically twice to the word “runoff.”

Finally, the last sentence in this subsection is proposed to be deleted because it has caused significant confusion about the Board’s intent regarding modifications of buffer areas. Following considerable evaluation of scientific data available at the time regarding buffers, the Board determined that a 100-foot wide buffer, preferably vegetated with trees, should be required around all tributary streams and other RPA features. However, the Board recognized that there would be some situations where narrower buffer areas might be necessary, such as on small existing residential lots and agricultural fields where the land is used to produce crops/income annually. Provisions were incorporated into the regulations to allow for modifications in such cases. Furthermore, an exception process was provided for to address unforeseen circumstances.

Another issue the Board was addressing was a request by commenters to allow for “equivalent” measures to be used in complying with the program’s performance standards. To provide flexibility in the plan of development review process for local government officials to make such decisions administratively, and to prevent the need for an applicant to always have to apply for

an exception to authorize buffer modification, the Board inserted the sentence in question at this point in the regulations:

Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area may be employed in lieu of the 100-foot buffer.

The Board never intended that this provision would authorize uniform 50-foot wide buffers with accompanying BMPs in new development projects. However, some local governments have interpreted it that way. The Board intended that there should be 100-foot wide buffers in all new developments unless there was a hardship or some other compelling reason for a narrower buffer, in which cases other parts of the regulations provide means of relief (specifically allowed modifications, encroachments, and exceptions). Therefore, this sentence is proposed to be deleted, and language is proposed to be changed in other sections of the regulations dealing with buffers, to clarify the Board's intent.

! §§ 9VAC10-20-130.B.1 through 9VAC10-20-130.B.1.d [Originally §§ 4.3.B.1 through 4.3.B.1.d, will be §§ 9VAC10-20-130.5.a through 9VAC10-20-130.5.a(4)] (Page 18)

As part of the reorganization of this subsection for clarity, these subdivisions are deleted here and moved to a new location with the numbers indicated above. As well, language was added to clarify that maintenance is allowed within the buffer to prevent upland erosion and concentrated stormwater flows.

! § 9VAC10-20-130.B.2 (Originally § 4.3.B.2, will be § 9VAC10-20-130.4) (Page 18)

This subdivision is renumbered to be consistent with the new VAC numbering style. As well, the intent is clarified by shifting the terminology from buffer width modifications to encroachments within the buffer.

! § 9VAC10-20-130.B.2.a (Originally § 4.3.B.2.a, will be § 9VAC10-20-130.4.a) (Page 18)

This subdivision is renumbered to be consistent with the new VAC numbering style. As well, the intent is clarified by shifting the terminology from buffer modifications to encroachments within the buffer.

! § 9VAC10-20-130.B.2.b (*Originally § 4.3.B.2.b, will be § 9VAC10-20-130.4.b*) (Pages 18-19)

This subdivision is renumbered to be consistent with the new VAC numbering style. As discussed earlier, the term “where possible” is replaced with the term “where practicable.” Also, the language here is reorganized and supplemented for clarification without changing its substance.

! § 9VAC10-20-130.B.2.c (*Originally § 4.3.B.2.c, will be § 9VAC10-20-130.4.c*) (Page 19)

This subdivision is renumbered to be consistent with the new VAC numbering style. As well, the intent is clarified by shifting the terminology from buffer reductions to encroachments into the buffer.

! § 9VAC10-20-130.B.3 (*Originally § 4.3.B.3, will be § 9VAC10-20-130.7*) (Page 19)

This subdivision is deleted here and moved to the location numbered as shown above. The language is also changed somewhat so as not to treat this provision as an exemption, but rather to give local governments more discretion about how to deal with buffers within Intensely Developed Areas and isolated redevelopment and in-fill sites.

! § 9VAC10-20-130.B.5 (*New subdivision*) (Page 19)

This subdivision gathers all language in the regulations regarding specifically authorized modifications of vegetated buffer areas.

! §§ 9VAC10-20-130.B.5.a through 9VAC10-20-130.B.5.d (*New subdivisions; originally §§ 4.3.B.1 through 4.3.B.1.d*) (Page 19)

The language here is unchanged, but it has been reorganized to this location in the regulations for clarification.

! § 9VAC10-20-130.B.4 (*Originally § 4.3.B.4, will be § 9VAC10-20-130.5.b*) (Page 19)

This subdivision is renumbered to be consistent with the new VAC numbering style. As well, the intent is clarified by shifting the terminology from buffer reductions to encroachments into the buffer.

! § 9VAC10-20-130.B.4.a [*Originally § 4.3.B.4.a, will be § 9VAC10-20-130.5.b(1)*] (Page 20)

The language is changed in this subdivision for the sake of clarification and to provide more flexibility by linking the condition for encroachment in the landward 50 feet of the buffer area to implementation of at least one appropriate BMP rather than enrollment in a government-funded BMP program.

! §§ 9VAC10-20-130.5.b(1)(a) through 9VAC10-20-130.5.b(1)(b) (*New subdivisions*)
(Page 20)

These two new subdivisions set forth the specific conditions that must be satisfied for a farmer to qualify for encroachment into the landward 50 feet of the buffer area. Subdivision (a) sets the requirement if nutrient management is the predominant water quality issue, and subdivision (b) sets the requirement if erosion control is the predominant water quality issue. This language resulted from extensive discussions between Department staff and representatives of Soil and Water Conservation District Boards and staff and agricultural industry organizations, as well as from a consensus of the members of the Board's Regulation Advisory Committee.

! § 9VAC10-20-130.B.4.b [*Originally § 4.3.B.4.b, will be § 9VAC10-20-130.5.b(2)*]
(Pages 20-21)

The language is changed in this subdivision for the sake of clarification and to provide more flexibility by linking the condition for encroachment in the landward 75 feet of the buffer area to implementation of appropriate BMPs addressing all water quality issues (erosion control, nutrient management, and pesticide chemical management), rather than to implementation of a conservation plan (an assessment may demonstrate that the farmer is already doing all that is necessary, with or without an existing plan). Specific requirements for addressing each water quality issue are set forth. This language resulted from extensive discussions between Department staff and representatives of Soil and Water Conservation District Boards and staff and agricultural industry organizations, as well as from a consensus of the members of the Board's Regulation Advisory Committee.

! § 9VAC10-20-130.B.4.c [*Originally § 4.3.B.4.c, will be § 9VAC10-20-130.5.b(3)*]
(Page 21)

The language in this subdivision has been changed to clarify the conditions under which buffers will not be required for agricultural drainage ditches (NOTE: Buffers would only otherwise apply to ditches that have perennial flow in them). The new language provides greater flexibility, because it links the condition to implementation of one or more BMPs addressing the predominant water quality issue (erosion or nutrient management) rather than to a conservation plan.

The following table is a comparison of what was previously required in the regulations and what is now proposed to be required for a farmer to satisfy the agricultural requirements in the regulations and qualify for approval to encroach into the buffer:

Type CBPA or Buffer	Current Requirement	Proposed Requirement
RMA tract	A full conservation plan, addressing soil erosion, nutrient mgmt., and pest mgmt. must be developed and approved by the SWCD for each tract, but the plan does not have to be implemented.	<p>An assessment of the existing operation and conservation practices must be conducted, including soil erosion control, nutrient management, and pest management. If current practices are adequate, those practices will be documented and nothing more needs to be done. If not, recommendations appropriate for each field and operation will be made regarding additional conservation practices needed or beneficial.</p> <p>The recommendations would not be required to be implemented on RMA tracts, just as conservation plans are not currently required to be implemented. However, information would be provided and persuasive influence exerted to encourage implementation, just as is done currently. (Anecdotally, SWCD staff indicate they have a pretty good success record in persuading farmers to implement appropriate BMPs, especially since, in many cases, the BMPs make economic sense as well as conservation sense.)</p> <p>If the person conducting the assessment determines that additional nutrient management measures are needed, then a full nutrient management plan will be developed, consistent with the plan content and development procedures in the Virginia Nutrient Management Training and Certification Regulations.</p> <p>If the person conducting the assessment determines that additional erosion control measures are needed, then an erosion control plan will be developed. The goal for soil erosion control recommendations should be to keep soil loss to "T" but to allow flexibility up to a maximum loss consistent with an Alternative Conservation System, as defined by the USDA-NRCS in the FOTG. This is consistent with USDA-NRCS practice in planning for highly erodible lands and will assure uniformity across programmatic lines.</p> <p>If the person conducting the assessment determines that additional pest management measures are needed, IPM sheets appropriate for the particular operation will be provided to the operator, as is currently done. The operator will be referred to Cooperative Extension for a more specific plan or recommendations, as is currently done.</p>
RPA tract with full 100-foot buffer	Same as above. Also, a full 100-foot wide vegetated buffer must be in place between the field and the stream of other RPA components.	Same as above. However, if specific erosion or other problems are identified which, in the opinion of the local SWCD Board, are causing or may cause a direct negative impact to the RPA, buffer performance, or water quality of the nearby stream or associated wetlands, such problems must be corrected within specified period of time, consistent with the time frames and conditions specified in the Agricultural Stewardship Act implementation guidelines. Referrals will be made, as appropriate, to the USDA-NRCS for free assistance with engineering practice design and installation and, where applicable, cost-share assistance. Alternatively, the owner/operator may, at his or her own cost, hire a private consultant for this assistance. The local government will be notified of any problems requiring correction for the purposes of follow-up, further consideration and, if necessary, enforcement.

Type CBPA or Buffer	Current Requirement	Proposed Requirement
RPA tract with modified 50-foot buffer	At least one BMP must be implemented on the field, which, in combination with the modified buffer area, achieves water quality protection, pollution removal, and water resource conservation at least the equivalent of the 100-foot wide buffer.	<p>At least one BMP must be implemented which, in the opinion of the local SWCD Board, addresses the predominant water quality issue for the field — either erosion control or nutrient management — and, in combination with the modified buffer area, achieves water quality protection, pollution removal, and water resource conservation at least the equivalent of the 100-foot wide buffer.</p> <p>If nutrient management is determined to be the predominant water quality issue, a full nutrient management plan must be developed and implemented consistent with the plan content and development procedures in the Virginia Nutrient Management Training and Certification Regulations. Soil test will be required for such plans.</p> <p>If soil erosion is determined to be the predominant water quality issue, an erosion control plan must be developed to reduce soil loss to T, but the plan may allow up to an Alternative Conservation System (ACS) where it may not be feasible to attain T. This is consistent with current USDA-NRCS practice in planning for highly erodible lands and assures consistency across programmatic lines.</p> <p>In addition to implementation of the BMP(s), if specific erosion or other problems are identified which, in the opinion of the local SWCD Board, are causing or may cause a direct negative impact to the RPA, buffer performance, or water quality of the nearby stream or associated wetlands, such problems must be corrected within specified period of time, consistent with the time frames and conditions specified in the Agricultural Stewardship Act implementation guidelines. Referrals will be made, as appropriate, to the USDA-NRCS for free assistance with engineering practice design and installation and, where applicable, cost-share assistance. Alternatively, the owner/operator may, at his or her own cost, hire a private consultant for this assistance. The local government will be notified of any problems requiring correction for the purposes of follow-up, further consideration and, if necessary, enforcement.</p>

Type CBPA or Buffer	Current Requirement	Proposed Requirement
RPA tract with modified 25-foot buffer	The complete conservation plan must be implemented on the field, addressing soil erosion control, nutrient mgmt., and pest mgmt., and which, in combination with the modified buffer, achieves water quality protection, pollution removal, and water resource conservation at least the equivalent of the 100-foot wide buffer.	<p>Conservation measures must be implemented addressing all three water quality issues — erosion control (the field must meet T meet T if possible or, alternatively, up to an ACS), nutrient management (a full nutrient management plan, including soil tests, must be developed and implemented, consistent with the plan content and development procedures contained in the Virginia Nutrient Management Training and Certification Regulations), and pest management (IPM sheets will be provided and referral will be made to the local Extension Agent). All recommendations resulting from the assessment must be implemented on the tract, including correction of any identified pollution problems, as described above, within a specified time period, consistent with the time frames and conditions specified in the Agricultural Stewardship Act implementation guidelines.</p> <p>It is presumed that implementation of BMPs and other conservation measures addressing all three components will, in combination with the modified buffer area, achieve water quality protection, pollution removal, and water resource conservation at least the equivalent of the 100-foot wide buffer.</p>

! §§ 9VAC10-20-130.B.6 through 9VAC10-20-130.6.b (*New subdivision; originally §§ 5.6.E through 5.6.E.2*) (Page 21)

This language was moved to this location in the regulations from the section indicated above because it relates to developing within the RPA. The language has not been changed.

! § 9VAC10-20-130.B.7 (*New subdivision; originally § 4.3.B.3, then § 9VAC10-20-130.B.3*) (Page 22)

As noted earlier, on pages 19-20, this language was reorganized to this location in the regulations. It is changed somewhat so as not to treat this provision as an exemption, but rather to give local governments more discretion about how to deal with buffers within Intensely Developed Areas and isolated redevelopment and in-fill sites.

! § 9VAC10-20-140 (*Originally § 4.4, will be § 9VAC10-20-110.B*) (Page 22)

The language was reorganized from this location in the regulations to a position early in Part IV because the content is more appropriate in that position. The language was amended there to add references to the two newly created Parts of the regulations, specifically addressing comprehensive plans (now the exclusive focus of Part V), zoning and subdivision ordinances (new Part VI), and the local assistance/consistency review processes (new Part VII).

! §§ 9VAC10-20-150 through 9VAC10-20-150.A (*Originally §§ 4.5 through 4.5.A, will continue to be §§ 9VAC10-20-150 through 9VAC10-20-150.A*) (Page 22)

The title of this section and the catch line of the first subsection are proposed to be changed to more accurately reflect their contents.

! § 9VAC10-20-150.B (*Originally § 4.5.B, will continue to be § 9VAC10-20-150.B*) (Page 22)

The word “roads” is added to the catch line since roads are addressed among the listed exemptions.

! § 9VAC10-20-150.B.2 (*Originally § 4.5.B.2, will continue to be § 9VAC10-20-150.B.2*) (Page 23)

The word local is proposed to be moved in the sentence in order to clarify that all the listed exempt utilities are local utilities. Also, cable television lines are added to the list of exempt local utilities.

! §§ 9VAC10-20-150.C through 9VAC10-20-150.C.2 (*Originally §§ 4.5.C through 4.5.C.2, will be §§ 9VAC10-20-130.2 through 9VAC10-20-130.2.b*) (Page 23)

The language of this section is proposed to be moved to a more appropriate position in the regulations, as noted above. The only change is a technical amendment of 130.2.b, where the number referencing the erosion control requirements is changed to match the new VAC numbering of this amendment.

! § 9VAC10-20-150.C (*New subdivision; originally § 4.6, then § 9VAC10-20-160*) (Pages 23-24)

Rather than being treated as a separate section, this language is reorganized to become part of this section, dealing with nonconformities, exemptions, and exceptions. An additional condition for an exception has been added by reference to the Code of Virginia. This links exceptions to statutory conditions that have previously been applicable implicitly because of the link of local Bay Act programs with police and zoning powers. Finally, the last sentence has been modified to correct the references to the new applicable section numbers.

! § 9VAC10-20-160 (*Originally § 4.6*) (Page 24)

As noted immediately above, this section is proposed to be repealed, and the language relocated to the end of the previous section.

! Part V (*Originally Part V, will continue to be Part V*) (Page 24)

The title of this part of the regulations is proposed to be changed to focus specifically on criteria applying to local comprehensive plans, which are now proposed to be the only subject of this

part. Previously, this part included criteria now divided among this part and the new Parts VI and VII.

! § 9VAC10-20-170 (*Originally § 5.1, will continue to be § 9VAC10-20-170*) (Page 24)

The language is proposed to be changed to focus on the specific content of this part, which is comprehensive plans as they pertain to the Bay Act.

! §§ 9VAC10-20-180 through 9VAC10-20-210 (*Originally §§ 5.2 through 5.5*) (Pages 24-25)

All of these sections are repealed in their entirety (including subsections and subdivisions) in their current positions. The language is reorganized into other more relevant positions in the regulations to improve clarity and understanding. Those movements will be described below as each section is addressed independently.

! § 9VAC10-20-220 (Originally § 5.6, will be § 9VAC10-20-231) (Page 26)

This section originally addressed criteria regarding local comprehensive plans, zoning ordinances, plan-of-development review processes, subdivision ordinances, water quality impact assessments (already explained at its new location, discussed above), and Board review of local programs. The lead paragraph, with this section number, is proposed to be repealed at this location and reorganized to the position indicated above. Remaining subsections and subdivisions originally in this section are proposed to be reorganized and/or renumbered (consistent with the new, more relevant, positions and the VAC numbering style). Those proposed changes will be described below as each section is addressed independently.

! § 9VAC10-20-220.A (Originally § 5.6.A, will be § 9VAC10-20-171) (Page 26)

The language in this section is proposed to be changed to reflect more accurately what really occurs in the comprehensive planning process and what is needed by the Board to evaluate consistency of the comprehensive plan or plan component adopted pursuant to the requirements in these regulations. The word “should” is proposed to be changed to “shall”, because the listed items are standard components of all comprehensive plans and are needed to understand comprehensive plans.

! § 9VAC10-20-220.A.1 (Originally § 5.6.A.1, will be § 9VAC10-20-171.1) (Page 26)

The changes in this subdivision include some minor word changes and additions for clarity. Also, previously the regulations stated that the local governments “should” do or consider doing all the things listed, because the list included items that might not apply to all localities. This amendment proposes to add to the end of the paragraph the words “as applicable to the locality.” Therefore, the word “should” is proposed to be changed to “shall” because, where these items do apply, the local government must consider them to develop an effective water quality component of the comprehensive plan.

! § 9VAC10-20-220.A.1.a (Originally § 5.6.A.1.a, will be § 9VAC10-20-171.1.a) (Page 26)

All Tidewater local governments have designated their CBPAs, so this subdivision is proposed to be changed to identify the location and extent of the designated Preservation Areas rather than the information upon which the designations was based.

! § 9VAC10-20-220.A.1.b (Originally § 5.6.A.1.b, will be § 9VAC10-20-171.1.b) (Page 26)

Information regarding marine resources is proposed to be deleted here because collecting such information is difficult for local governments and is often not relevant to the comprehensive land use planning process. This is proposed to be replaced with information regarding physical constraints to development, which is important information previously missing from this list.

! § 9VAC10-20-220.A.1.c (Originally § 5.6.A.1.c, will be § 9VAC10-20-171.1.c) (Page 26)

The location of shoreline erosion control structures is proposed to be deleted because such structures are not as relevant to the water quality component of a comprehensive plan as are the locations of shoreline erosion problems. This amendment proposes to add the words “and streambank” as descriptors of the erosion problems, because the term “shoreline erosion” alone connotes open tidal waters, whereas “streambank erosion” includes smaller streams and nontidal settings.

! § 9VAC10-20-220.A.1.d (*Originally § 5.6.A.1.d, will be § 9VAC10-20-171.1.d*) (Page 26)

The concept of conflicts between existing and proposed land uses and water quality protection implies an analysis process rather than basic information. Therefore, this subdivision is proposed to be changed to focus on the information necessary for such an analysis, that is, identification of existing and proposed land uses.

! §§ 9VAC10-20-171.1.e through 9VAC10-20-171.1.f (*New subdivisions*) (Page 26)

These two items were previously missing from this list but are considered necessary information for developing an effective water quality protection component of a local comprehensive plan and are thus proposed to be added.

! § 9VAC10-20-220.A.1.e (*Originally § 5.6.A.1.e, will be § 9VAC10-20-171.1.g*) (Page 26)

This is a technical amendment to renumber this subdivision in sequence. The language is not changed.

! § 9VAC10-20-220.A.2 (*Originally § 5.6.A.2, will be § 9VAC10-20-171.2*) (Page 26)

This subdivision is proposed to be amended for clarification, to establish a clear link between local water quality protection policy in the comprehensive plan and the information collected relevant to water quality protection issues.

! § 9VAC10-20-220.A.2.a (*Originally § 5.6.A.2.a, will be § 9VAC10-20-171.2.a*) (Page 27)

This subdivision is merely renumbered in sequence. The language is not changed.

! § 9VAC10-20-220.A.2.b (*Originally § 5.6.A.2.b, will be § 9VAC10-20-171.2.b*) (Page 27)

Previously this subdivision stated that the local governments “should” prepare policy statements on a list of issues, because the list included items that might not apply to all localities. This amendment proposes to add to the end of the paragraph the words “as applicable to the locality.” Therefore, the word “should” is proposed to be changed to “shall” because, where these items do apply, the local government must develop related policy statements to have an effective water quality component of the comprehensive plan.

! § 9VAC10-20-220.A.2.b(1) [Originally § 5.6.A.2.b(1), will be § 9VAC10-20-171.2.b(1)] (Page 27)

This subdivision is changed for clarification of meaning.

! § 9VAC10-20-220.A.2.b(2) [Originally § 5.6.A.2.b(2), will be § 9VAC10-20-171.2.b(2)] (Page 27)

This subdivision is proposed to be changed to add an important consideration regarding threats to groundwater and water supply from existing pollution sources.

! §§ 9VAC10-20-220.A.2.b(3) through 9VAC10-20-220.A.2.b(4) [Originally §§ 5.6.A.2.b(3) through 9VAC10-20-5.6.A.2.b(4)] (Page 27)

These two subdivisions are no longer considered relevant or necessary issues to be required for inclusion in the water quality components of local comprehensive plans. Therefore, both subdivision are proposed to be deleted.

! § 9VAC10-20-220.A.2.b(5) [Originally § 5.6.A.2.b(5), will be § 9VAC10-20-171.2.b(3)] (Page 27)

This subdivision is merely renumbered in the new sequence. The language is not changed.

! § 9VAC10-20-220.A.2.b(6) [Originally § 5.6.A.2.b(6)] (Page 27)

This subdivision is proposed to be deleted, because the issue of existing pollution is proposed to be included below in old subdivision (7), newly numbered as subdivision (5).

! § 9VAC10-20-171.2.b(4) (New subdivision) (Page 27)

This subdivision is proposed to be added because shoreline and streambank erosion are considered by the Board to be relevant subjects of policy statements in the water quality protection component of a local comprehensive plan.

! § 9VAC10-20-220.A.2.b(7) [Originally § 5.6.A.2.b(7), will be § 9VAC10-20-171.2.b(5)] (Page 27)

This subdivision is proposed to be expanded to address existing pollution sources (deleted above), which present a more significant problem as associated with previously developed land, where water quality protection measures probably were not installed as part of the development process. Language is proposed to be added to the end of the sentence to include redevelopment areas, such as in-fill lots, other than locally designated Intensely Developed Areas.

! § 9VAC10-20-220.A.2.c (*Originally § 5.6.A.2.c, will be § 9VAC10-20-171.2.c*) (Page 27)

While alternative policies are important for consideration and discussion in the process of deciding upon final policies, this amendment proposes to delete reference to their inclusion in the plan. Mention of alternative policies considered is not common practice in comprehensive plans, and it is not necessary.

! § 9VAC10-20-220.A.2.d (*Originally § 5.6.A.2.d, will be § 9VAC10-20-171.2.d*) (Page 27)

The changes proposed in this subdivision are for clarification. The intention is that the listed elements all affect one another, and it is important that policies addressing each should be consistent with one another, both in their statement and in their implementation.

! Part VI [*New Part*] (Page 28)

This is a new part, incorporating the original criteria, as amended, addressing local zoning and subdivision ordinances.

! § 9VAC10-20-181 [*New section*] (Page 28)

This is an introductory section for this new part of the regulations, stating the purpose of the part.

! § 9VAC10-20-220.B (*Originally § 5.6.B, will be § 9VAC10-20-191*) (Page 28)

When the regulations were originally adopted, the criteria addressing zoning ordinance and subdivision ordinance changes needed to address water quality protection concerns and be consistent with the Act were minimal, because local governments were facing the much more complex tasks of designating their CBPAs and adopting the performance requirements of the program. The Board committed to provide more complete criteria regarding zoning and subdivision ordinances when the regulations were amended. However, for numerous reasons, the Board has been unable to amend the regulations until now.

The changes throughout this new part of the regulations fulfill the Board's commitment to provide more specific criteria regarding local zoning and subdivision ordinances. This introductory paragraph of this section of the regulations sets forth specific things that must be incorporated into each local zoning ordinance to achieve consistency with the Act and regulations.

Section 10.1-2109 of the Act requires Tidewater local governments to amend their local zoning and subdivision ordinances to incorporate the protection of water quality. Most localities are just beginning that process, after focusing earlier on designating CBPAs, adopting the performance standards, implementing a plan of development review process, and amending their comprehensive plans. Therefore, the amendments in this new part can be incorporated into those local ordinance amendment processes with little, if any, additional work. In fact, those local

amendment processes may be more efficient because clearer guidance and direction is being provided.

! § 9VAC10-20-220.B.1 (*Originally § 5.6.B.1, will be § 9VAC10-20-191.1*) (Page 28)

The word “by” is added at the end of this sentence to introduce the next two subdivisions, which are new and set forth specific ways the ordinances can provide for water quality protection.

! §§ 9VAC10-20-220.B.1.a through 9VAC10-20-220.B.1.b (*New subdivisions*) (Page 28)

These two new subdivisions set forth specific ways local zoning ordinances can provide for water quality protection.

! § 9VAC10-20-220.B.2 (*Originally § 5.6.B.2, will be § 9VAC10-20-191.2*) (Page 28)

This subdivision is proposed to be expanded to set forth minimum expectations regarding the incorporation of Bay Act regulation performance criteria into local zoning ordinances.

! § 9VAC10-20-220.B.3 (*Originally § 5.6.B.3, will be § 9VAC10-20-191.3*) (Page 28)

This subdivision is proposed to be changed to include more details, for clarification.

! § 9VAC10-20-171.4 (*New subsection*) (Page 29)

This is a new subsection encouraging local governments to identify and eliminate any obstacles in their zoning ordinances and review processes that would prevent the achievement of the water quality goals of the Act and these regulations.

! § 9VAC10-20-220.C (*Originally § 5.6.C, will be § 9VAC10-20-231.1.e*) (Page 29)

This subsection is proposed to be deleted here and reorganized to a more appropriate position in the regulations, as indicated above.

! § 9VAC10-20-220.D (*Originally § 5.6.D, will be § 9VAC10-20-201*) (Page 29)

This is original language inserted at the beginning of a new section, specifically addressing subdivision ordinances. The only change is that the word “shall” is added at the end of this sentence to introduce the next two subdivisions, which are new and set forth specific ways these ordinances must provide for water quality protection.

! §§ 9VAC10-20-201.1 through 9VAC10-20-201.1.b (*New subsection and subdivisions*) (Page 29)

As noted above, the Board committed to provide more complete criteria regarding zoning and subdivision ordinances when the regulations were amended. This new subsection and subdivisions identify specific kinds of standards local governments must incorporate into their subdivision ordinances to protect water quality.

! § 9VAC10-20-220.D.1 (*Originally § 5.6.D.1, will be § 9VAC10-20-201.2*) (Page 29)

This subsection is proposed to be expanded in order to add specific things that can be added to local subdivision ordinances to ensure the integrity of CBPAs.

! § 9VAC10-20-220.D.2 (*Originally § 5.6.D.2, will be § 9VAC10-20-201.3*) (Pages 29-30)

This subsection is proposed to be expanded in order to elaborate on specific things to be set forth in local subdivision ordinances to address the performance standards in these regulations.

! § 9VAC10-20-201.3.a (*New subdivision*) (Page 30)

This new subdivision is proposed to be added to provide further clarification of how local subdivision ordinances are to be changed to adequately reflect the performance standards in these regulations.

! § 9VAC10-20-201.4 (*New subdivision*) (Page 30)

This new subdivision tracks language under the zoning ordinance section, requiring consistency among the various local ordinances and procedures toward the goal of protecting water quality.

! Part VII (*New part*) (Page 30)

This new part incorporates all the material from the original Part V that dealt with local assistance and local program consistency determinations.

! § 9VAC10-20-211 (*New section*) (Page 30)

This new part establishes the purpose of this new part of the regulations.

! §§ 9VAC10-20-215 through 9VAC10-20-215.C (*New section, originally §§ 5.2 through 5.2.C, then §§ 9VAC10-20-180 through 9VAC10-20-180.C*) (Page 30)

This language regarding development of the *Local Assistance Manual* was merely reorganized to this position in the regulations. The only change in the wording is the deletion at the end of subsection B relating to timely completion of guidance for the first year requirements of the program. Since that period is passed and the work has already been done, that language is no longer needed.

! § 9VAC10-20-221 (*New section, originally § 5.3, then § 9VAC10-20-190*) (Page 31)

This new section is merely the original language from the above referenced original section, reorganized to a more appropriate position in the regulations. The language has not been changed.

! § 9VAC10-20-225 (*New section, originally § 5.4, then § 9VAC10-20-200*) (Page 31)

This new section is merely the original language from the above referenced original section, reorganized to a more appropriate position in the regulations. The language has not been changed.

! § 9VAC10-20-230 (*Originally § 5.7, will be § 9VAC10-20-250.3*) (Page 31)

This section is proposed to be repealed in this location and reorganized to the position in the regulations indicated above.

! § 9VAC10-20-231 (*New section, originally § 5.6, then § 9VAC10-20-220*) (Page 31)

This new section proposes to more accurately and clearly reflect the way the program is being implemented. Local implementation has been divided into three phases, which are explained in the following subsections and subdivision. The language at the beginning of this new section is merely moved to this position in the regulations from the above referenced original location. The only changes in this paragraph are that (1) the reference to adoption “within 12 months of the adoption date of this chapter” has been deleted, since that time has passed and the local adoptions have all taken place; and (2) the word “guidelines” at the beginning of the last sentence has been changed to the word “criteria” for consistency in the use of terms.

! §§ 9VAC10-20-231.1 through 9VAC10-20-231.1.d (*New subsection and subdivisions, originally §§ 5.5 through 5.5.A.4, then §§ 9VAC10-20-210 through 9VAC10-20-210.A.4*) (Page 31)

This new subsection and related subdivisions establish that Phase I of local program implementation consists of designating CBPA's and adopting the performance criteria. The remaining language is moved to this position in the regulations from the above referenced locations with only minor word changes, for the sake of integration, but no change in meaning.

! § 9VAC10-20-231.1.e (*New section, originally § 5.6.C, then § 9VAC10-20-220.C*) (Page 32)

The language of this new subdivision, relating to local adoption of a plan of development review process — to review applications for consistency with the performance criteria — is moved to this position in the regulations from the above referenced location with only minor word changes, for the sake of integration, but no change in meaning.

! §§ 9VAC10-20-231.1.f through 9VAC10-20-231.1.g (*New section, originally § 5.5.C, then § 9VAC10-20-210.C*) (Page 32)

The language of these two new subdivisions is derived from the above referenced original subsection. However, it is proposed to be changed to more accurately reflect the actual process. The single original subsection is proposed to be divided here into two subdivisions to reflect the separate steps in the process.

! §§ 9VAC10-20-231.2 through 9VAC10-20-231.3 (*New subsections*) (Page 32)

These two new subsections are proposed to be added to articulate what is expected in Phase II (comprehensive plan updates) and Phase III (zoning and subdivision ordinance amendments) of the local program implementation process.

! § 9VAC10-20-231.4 (*New subsection*) (Page 32)

This new subsection articulates the link to other enabling authority allowing local governments, under certain conditions, to use civil penalties to enforce requirements of their local Bay Act programs.

! §§ 9VAC10-20-231.5 through 9VAC10-20-231.5.a (*New subsection and subdivision, originally § 5.5.B, then § 9VAC10-20-210.B*) (Page 32)

This language is derived from the above referenced original subsection. However, it is proposed to be changed to more accurately reflect the actual process and for better integration into the context of this part of the regulations. The language was split into a subsection heading and a subdivision, because an additional subdivision is added afterwards, as discussed next.

! § 9VAC10-20-231.5.b (*New subsection*) (Page 32)

This language is proposed to be added to reference the review process described in the next part.

! Part VIII (*New part, originally Part VI*) (Page 33)

The numbering of this part is changed to adjust for sequencing, and the title is proposed to be changed to reflect its focus on implementation as well as enforcement.

! § 9VAC10-20-240 (*Originally § 6.1, will continue to be § 9VAC10-20-240*) (Page 33)

This is a technical amendment to change the reference to “these regulations” to, instead, reference “this chapter,” the terminology used consistently in the VAC to refer to these regulations.

! § 9VAC10-20-250 (*Originally § 6.2, will continue to be § 9VAC10-20-250*) (Page 33)

The original language of this section is unchanged. However, a more specific description of the Board’s consistency review process is provided in the following new subsections and subdivisions.

! §§ 9VAC10-20-250.1 through 9VAC10-20-250.2 (*New subsections and subdivisions*) (Page 33)

These new subsections and subdivisions are proposed to be added to set forth the process the Board uses to review the consistency of local program implementation with provisions of the Act and regulations.

! § 9VAC10-20-250.3 (*New subdivision, originally § 5.7*) (Pages 33-34)

The language of this new subdivision is derived from the above reference original subsection. However, it is proposed to be expanded to more clearly describe the certification process.

! § 9VAC10-20-260 (*Originally § 6.3, will continue to be § 9VAC10-20-260*) (Page 34)

This section is proposed to have a technical amendment to change the reference to “these regulations” to, instead, reference “this chapter,” the terminology used consistently in the VAC to refer to these regulations. Furthermore, a phrase is added making it clear that the Board will exhaust all administrative remedies related to enforcement before ever taking legal action.

! § 9VAC10-20-270 (*Originally § 6.4*) (Page 34)

This section is proposed to be repealed because the new VAC no longer includes adoption date language in the body of a regulation.

! § 9VAC10-20-280 (*Originally § 6.5*) (Page 34)

This section is proposed to be repealed because the new VAC no longer includes effective date language in the body of a regulation.